IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 05.09.2007

CORAM

THE HONOURABLE MR. JUSTICE S.J.MUKHOPADHAYA
AND
THE HONOURABLE MR. JUSTICE N.PAUL VASANTHAKUMAR

W.A. NO. 2875 OF 2004
AND
W.A.M.P. NO. 247 OF 2007

V.S. Rathinam Chettiar .. Appellant

- Vs -

1. A/m. Vedaraneswarar Swami Temple
rep. by its Executive Officer
Vedaranyam, Nagapattinam.

2. The Special Commissioner and
Commissioner of Land Administration
Ezhilagam, Chennai - 5.

3. The Director of Survey and Settlement
Ezhilagam, Chennai 5.

4. The Assistant Settlement Officer
Thanjavur. .. Respondents

Writ Appeal filed against the order dated 24th June, 2004, passed by the learned single Judge in W.P. No.34355 of 2003 as stated therein.

This Petition presented to this Court under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the first respondent culminating in the order No.Ni Mu(Ki)/8/2000 dated 15.2.2003 and quash the same and forbear the respondents 1 to 3 from proceeding any further in the matter.

For Appellant : Mr. K.Chandrasekar

For Respondents : Mr. A.S.Kailasam for R-1
Mr. D.Sreenivasan, AGP, for RR-2 & 3

JUDGMENT

S.J.MUKHOPADHAYA, J.

In this appeal, the appellant/respondent has challenged the order dated 24th June, 2004, passed by learned single Judge in W.P. No.34355 of 2003 whereby and whereunder while it was accepted that

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the order passed on 23rd Dec., 1971, had not been served on appellant, and the order passed by the respondent Special Commissioner-cum-Commissioner of Land Administration remanding the case was upheld, instead of remanding the case to the authority to whom the case was remanded by respondent, Special Commissioner-cum-Commissioner of Land Administration, learned single Judge remitted the case to the Tribunal constituted under the Tamil Nadu Minor Inam Estates (Abolition & Conversion into Ryotwari) Act, 1963 (hereinafter referred to as 'Inam Estates Act').

2. As the case could be disposed of on a short question of law, it is not necessary to discuss all the facts, except the relevant one, as noticed hereunder :

According to the appellant, the property R.P. 391 was purchased by him from Mariappa Pillai on 3rd April, 1965, alongwith a building constructed thereon. He was paying house tax through assessment No.115. He purchased superstructure in N.S. No.175/309 (to the extent of 0.01) and paying a sum of Rs.200/= every year to the respondent Vedaraneswarar Swami Temple (hereinafter referred to as 'Devasthanam') for the site. There are seven shops assessed to panchayat tax under assessment Nos.134, 135, 44, 46 and 50. Similar claim was also made with regard to N.S. 175/308 (to an extent of 0.02).

Further case of the appellant is that the Assessment Settlement Officer issued impugned order on 23rd Nov., 1971, allowing the claim of Devasthanam with regard to Schedule-A property and the appellant's prayer for issuance of patta in his name in respect of land in question was rejected without intimating the same.

The appellant preferred an appeal before the Settlement Officer in R.C. No.6886/93/A2 as per Explanation 1 (b) below Schedule attached to the Madras Inam Estates (Abolition and Conversion into Ryotwari) Rules, 1965 - now known as Tamil Nadu Inam Estates (Abolition & Conversion into Ryotwari) Rules, 1976, (hereinafter referred to as 'Rules, 1976'), which was rejected on 14th Feb., 1994. Thereafter, the appellant preferred first revision application under Rule 7 before the Director of Settlement in E2/838/97 dated 30th Aug., 1998, dismissed of on 30th Aug., 1998. Subsequently, second revision was preferred by the appellant under Rule 8 before the Special Commissioner-cum-Commissioner, Board of Revenue having been abolished, it was registered as No.K-1/8/2000. In the said case, by impugned order dated 12th May, 2003, the Commissioner having noticed the fact that the order dated 23rd Dec., 1971 was not communicated to the appellant, remitted the matter to the Director of Settlement for reconsideration of the first revision application (used the term - Appeal). The respondent Devasthanam having challenged the said order, learned single Judge, by impugned order dated 24th June, 2004, while did not choose to interfere with the order of remand, observed that the appeal should be determined by Tribunal under Inam Estates Act.

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3. The main plea taken by appellant is that the order dated

23rd Nov., 1971, having passed by Assistant Settlement Officer u/s 15 (4) of Inam Estates Act, the appeal was maintainable before the Settlement Oficer as per Explanation 1 (b) below Schedule attached to the original Tamil Nadu Inam Estates (Abolition and Conversion into Ryotwari) Rules, 1965, against which first revision under Rule 7 was maintainable before the Director of Settlement and second revision under Rule 8 was maintainable before Board of Revenue, which having abolished, will lie before the Special Commissioner-cum-Commissioner, who has passed the order on 12th May, 2003.

On the other hand, counsel for the Devasthanam, while referred to the first part of the order dated 23rd Nov., 1971, submitted that the enquiry being made pursuant to suo motu power u/s 12 of Inam Estates Act, the appeal is only maintainable before the Tribunal u/s 12 (2) of Inam Estates Act, which was the ground and accepted by the learned single Judge.

It was contended on behalf of Devasthanam that the Assistant Settlement Officer is not required to pass any order u/s 15 (4). Section 12 empowers him to make an enquiry. However, it was accepted that the appellant has no grievance against the first part of the order dated 23rd Nov., 1971, passed by the Assistant Settlement Officer, wherein order was issued in favour of Devasthanam in respect of Schedule-A properties. The grievance of the appellant is only with regard to N.S. No.175/309 (to the extent of 0.1) and N.S. 175/308 (to an extent of 0.02), which was shown under Schedule-B property, and as prayer for grant of patta u/s 15 (4) has been rejected by the last paragraph of the order dated 23rd Nov., 1971.

4. Chapter III of Inam Estates Act, deals with grant of ryotwari pattas. Section 9, while stipulates the land in which the land holder is entitled to ryotwari pata, Section 10 deals with land in respect of which ryot is entitled to ryotwari patta. Under Section 11, ryotwari patta can be granted on the basis of personal cultivation in certain cases. On the other hand, sub-section (1) to Section 12 empowers the Settlement Officer to determine the lands in which any person is entitled to ryotwari patta. Sub-section (2) to Section 12 provides appeal to the Tribunal against decision of the Settlement Officer taken under sub-section (1) to Section 12.

From the aforesaid provision, it will be evident that if any order is passed by the Settlement Officer under sub-section (1) to Section 12 determining the question of entitlement to ryotwari patta in respect of any land, an appeal is maintainable under sub-section (2) to Section 12 before the Tribunal.

There is no specific provision made under the Inam Estates Act prescribing appeal against any declaration or determination made u/s 15 (4). It is only under Explanation 1 (b) below Schedule attached to the Rules, 1965, provision has been made to prefer such appeal before the Settlement Officer. As noticed, first revision application is maintainable under Rule 7 before the Director of Settlement and the second revision is maintainable under Rule 8 before the Board of Revenue, now Special

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Commissioner-cum-Commissioner.

5. In the present case, it will be evident that the appellant was aggrieved against the last part of the order dated 23rd Nov., 1971, passed by the Assistant Settlement Officer u/s 15 (4) of Inam Estates Act. In this background, we are of the view that the appeal against the same was maintainable before the Settlement Officer under Explanation 1 (b) below the Schedule attached to Rules, 1965, and against such decision in appeal, the first revision under Rule 7 was maintainable before the Director of Settlement. Therefore, there was no occasion for the learned single Judge to remit the case to the Tribunal for determination of any such appeal, no order having been passed against the appellant under sub-section (1) to Section 12.

6. Learned counsel appearing on behalf of the respondent referred to impugned order dated 23rd Nov., 1971, to suggest that the enquiry was made u/s 12 of the Act. However, it was accepted that while passing order allowing relief in favour of the respondent in respect of Schedule-A property, in the last paragraph the claim of the appellant was rejected u/s 15 (4) of the Inam Estates Act.

7. We have also noticed the order dated 23rd Nov., 1971, passed by Assistant Settlement Officer and heard the rival contentions of the parties. Having regard to the fact that the appellant has not challenged the total order dated 23rd Nov., 1971, but the last part of it, whereby his claim in respect of N.S. No.175/309 (to the extent of 0.1) and N.S. 175/308 (to an extent of 0.02), was rejected, we are of the view that instead of remitting the matter to the appellate or revisional authority, the matter should be referred back to the original authority, i.e., the Assistant Settlement Officer, Pudukottai, who passed the impugned order dated 23rd Nov., 1971, so far as it relates to the last paragraph of the said order.

8. In the first part of the order dated 23rd Nov., 1971, the Assistant Settlement Officer has noticed the deposition as was made on behalf of the appellant (R.W.2) that the property in R.P. 391 was purchased by him from Mariappa Pillai on 3rd April, 1965; there is a building on it for which he pays house tax vide assessment No.115; he purchased only the superstructure in N.S.175/309 and was paying rent to the Devasthanam for the site, i.e., the land, every year; he was paying panchayat tax in respect of seven shops constructed therein. The officer has further noticed the deposition of C.W.1, a Karnam of the village, who corroborated the version of P.W.1, relating to Schedule A land which was in possession of Devasthanam, but Schedule-B land had been leased to public. He has also noticed that in regard to Schedule-B lands, the sites, i.e., the land only belongs to the Devasthanam, but the buildings are owned and enjoyed by lessees. In the aforesaid background, while the Devasthanam's claim in respect of Schedule-A land was allowed and no claim of Devasthanam in respect of Schedule-B land was accepted, for the same reason,

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it appears that the application for grant of patta in favour of other claimants, who had a building over Schedule-B land were accepted and allowed.

9. Though the aforesaid facts have been noticed by the Assistant Settlement Officer, Pudukottai, in the last paragraph while he dealt with Schedule-B lands, vis-a-vis, the claim of the appellant (R.W.2), without discussing the aforesaid claim of the appellant (R.W.2), he rejected the claim of the appellant merely on the ground that the site belongs to the Devasthanam.

The aforesaid finding in the last portion in respect of appellant vis-a-vis Schedule-B lands having been passed without noticing the relevant facts as discussed earlier and not disputed by the Devasthanam that the appellant has a building, having purchased from Mariappa Pillai on 3rd April, 1965, and paying rent to Devasthanam @ Rs.200/= per annum, the last part of such order cannot be upheld and, therefore, instead of remitting the matter to the appellate or revisional authority, it is desirable that the claim of the appellant (R.W.2) should be decided afresh on the basis of the statement already recorded and noticed in the order dated 23rd Nov., 1971.

We may make it clear that we are not disturbing the decision as contained in order dated 23rd Nov., 1971, passed by the Assistant Settlement Officer in respect of Devasthanam or , other applicants and so far as it relates to evidence of appellant and Devasthanam as reflected therein; they are affirmed. The last part of the order where claim of appellant (R.W.2) has merely been rejected is only set aside and the matter is remitted back to the Assistant Settlement Officer to decide the claim of appellant (R.W.2) afresh on the basis of evidence on record as shown in the order dated 23rd Nov., 1971, which has been upheld by us. Decision in this regard be taken within a period of three months from the date of appearance of the appellant.

10. The order dated 24th June, 2004, passed by the learned single Judge in W.P. No.34355 of 2003 is modified to the extent above. The writ appeal is disposed of with the aforesaid observation. Consequently, connected miscellaneous petition is closed. However, there shall be no order as to costs.

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Asst. Registrar.

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Sub Asst. Registrar.

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To

1. The Executive Officer
   A/m. Vedaraneswarar Swami Temple
   Vedaranyam, Nagapattinam.

2. The Special Commissioner and
   Commissioner of Land Administration
   Ezhilagam, Chennai - 5.

3. The Director of Survey and Settlement
   Ezhilagam, Chennai 5.

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   Thanjavur.

1 cc to Mr.K. Chandrasekaran, Advocate, SR. 55237

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